



**A REQUEST FOR PRELIMINARY PLAT APPROVAL BY:**

**David & Daniel Bender,**

**FOR: Taylor Shadows Subdivision,**

**WHERE: East of Victor (Victor Cemetery Road)**

Prepared for the Planning & Zoning Commission

Public Hearing of July 8, 2014

**APPLICANT:** David Bender

**LANDOWNER:** Daniel Bender

**REQUEST:** David and Daniel Bender are requesting preliminary plat approval for a two (2) lot subdivision on a 13.93 acre lot. The two resulting lots will be 3.75 acres and 9.68 acres, with a 0.5 acre common area. The subdivision will utilize an existing driveway off of Victor Cemetery Rd.

**APPLICABLE COUNTY CODE:** Subdivision Preliminary Plat pursuant to Title 9, Chapter 3 Teton County Zoning Ordinance, (revised 5-12-2011); Teton County Comprehensive Plan (A Vision & Framework 2012-2030)

**LEGAL DESCRIPTION:** RP03N45E128850

Part of W ½ SE ¼ Section 12, Township 3N, Range 45E, B.M

**LOCATION:** Approx. 600 East Cemetery Rd.

**ZONING DISTRICT:** A-2.5, Borders Victor City (south) and Victor AOI (west)

**PROPERTY SIZE:** 13.93 acres

**VICINITY MAP:** The Bender property is on Victor Cemetery Rd. east of the cemetery.



**PROJECT DESCRIPTION:**

Daniel Bender owns a 13.93 acre parcel located east of the City of Victor on Victor Cemetery Rd. The site was previously platted for cemetery use; however, due to the difficult nature of digging graves on the property, the plat was abandoned and sold to Mr. Thompson (lot line adjustment). The parcel was then split off from the property to the north (Thompson property) in 2011, utilizing a one-time only lot split (#219995). In order to further divided this parcel, it must go through the subdivision process.

There is an existing driveway on the property, which will be improved for residential access. There is a 0.5 acres piece of land inside the driveway turnaround that the applicant would like to dedicate for common ownership by the two residential parcels. This 0.5 acre lot would be used for agricultural and/or septic uses.

**PROJECT BACKGROUND:**

David Bender submitted a completed application to the Teton County Planning Department on May 28, 2014.

The first step in the subdivision process is “Concept Review” (§9-3-2(B)). Because the property is completely in (WH) Wildlife Habitat Overlay, a public hearing before the Teton County Planning and Zoning Commission was required. The Concept Review was unanimously approved by the Planning Commission on April 8, 2014.

The second step in the subdivision process is the “Preliminary Plat Phase” (§9-3-2(C)). This is a two-step process. A public hearing before the Teton County Planning and Zoning Commission is required. After the Planning Commission makes a recommendation, a second public hearing with the Board of County Commissioners is required for approval.

**OVERVIEW OF PRELIMINARY PLAT APPROVAL:** The purpose of this review is to:

- a. Provide for an exchange of information regarding applicant’s proposed development ideas and the regulations and requirements of Title 9, the Master Plan, the Natural Resources Assessment, and other subdivision/PUD requirements;
- b. Advise the applicant of any public sources of information that may aid the applicant or the application, and identify policies and regulations that create opportunities or pose significant restraints for the proposed development;
- c. Review the sketch plans, if any, and provide the applicant with opportunities to improve the proposed plan in order to mitigate any undesirable project consequences;
- d. Review the compatibility with nearby land uses, either proposed or existing; and
- e. Provide general assistance by County staff on the overall design of the proposed development.

It is not to determine the exactness of each item required in the checklist of the final plat process.

**KEY ISSUES:**

On June 17, 2014, we had a Development Review Committee (DRC) meeting with the Teton County Engineer (Jay Mazalewski), Teton County Prosecutor (Kathy Spitzer), Teton County Building Official (Tom Davis), AW Engineering (Arnold Woolstenhulme), Teton County Planning

Administrator (Jason Boal), and Teton County Planner (Kristin Rader). From this meeting, the following key issues were identified:

- The CC&R's need to have sections added to address Bear Conflict Zone Prevention Standards, sign regulations, and that the development will meet the recommendations of the Natural Resource Analysis that was completed for the property.
- The Stormwater Plan & Erosion Plan should be reviewed to ensure the basins will be sized based on the area(s) they are receiving runoff from, basins need to be delineated on the map, and the map descriptors (legend and flow directions) need to be corrected.
- A response to the U.S. Fish & Wildlife letter needs to be added to the Natural Resources Analysis.
- A description for all four soil types on the property needs to be added to the Soils Report.
- Pullouts for emergency services need to be added and shown on the Road Plan.

### **INTER-AGENCY AND DEPARTMENTAL REVIEW COMMENTS**

U.S. Fish & Wildlife Services: A letter from the US Fish & Wildlife services that identified “endangered, threatened, proposed and/or candidate species and designated critical habitat which may occur in the area of the proposed” subdivision was received during the Concept Review process. One listed species, one proposed species, and two candidate species were identified. This information has been forwarded to the applicant to be used in the Natural Resource Analysis.

City of Victor: A letter from the City of Victor has been received recommending that the County allow access for the subdivision. The City recommends that parking on the street right of way should not be allowed during the snow removal season, and access to the Cemetery should be maintained at all times.

Eastern Idaho Public Health District: A letter was received from EIPHD approving the subdivision, recommending that both lots will most likely require alternative on-site sewage disposal systems. If locating them off-site, an easement will be required prior to EIPHD issuing a septic permit.

Idaho Department of Fish and Game: A letter from IDFG was received with comments on the Natural Resource Analysis for this subdivision. IDFG commented that if the recommendations in the Natural Resource Analysis were followed, negative effects on big game would be minimized. They also recommended that the property owners should plant vegetation that will not attract wildlife in order to avoid wildlife damages. In addition, they recommend that the Idaho State Department of Agriculture “Rules of Governing Private Feeding of Big Game Animals” is included in the Natural Resource Analysis as an addendum to ensure the owners are away of legal issues and negative effects with feeding big game. This information has been forwarded to the applicant to be added to the Natural Resource Analysis.

### **SPECIFIC REQUIREMENTS FOR PUBLIC HEARING NOTICE:**

Idaho Code, Title 67; Section 67-6509, 67-6511, 67-6512, and Title 9, Section 3-2-(B-2) of the Teton County Zoning Ordinance. The public hearing for the Planning & Zoning Commission was duly noticed in the Teton Valley News. A notification was sent via mail to surrounding property owners within a 300-foot buffer area and many more people because anyone within a subdivision that has a lot within 300 feet of a project is also notified. A notice was also posted on the property providing information about the public hearing.

## **COMMENTS FROM NOTIFIED PROPERTY OWNERS & PUBLIC AT LARGE:**

Staff has not received any written comments from the public.

## **CONSIDERATION OF APPROVAL:**

The Commission shall only recommend approval and the Board shall only approve if it finds that all of the following criteria (§9-3-2(C-8)) have been met (or if it finds that some of the criteria have not been met, may recommend approval with conditions that would ensure that the proposed development meets the criteria): (amd. 11-14-08 and 2011-03-17):

- a. The application is consistent with the Comprehensive Plan. (amd. 11-14-08)
  - **Framework Map: This property is located in the Foothills designation on the Framework Map.**
  - **Goal ED 2: Preserve our rural character and heritage and promote local agricultural industries.**
    - Goal ED 2, Policy 2.3: Promote smart growth strategies that help preserve rural character by enhancing existing communities and directing development towards them.
    - Goal ED 2, Policy 2.5: Encourage development that adheres to environmental standards.
  - **Goal ED 4: Accommodate additional population by supporting development that is economically responsible to the County and the community.**
    - Goal ED 4, Policy 4.1: Assess the public service requirements of new developments and weigh their off-site impacts against projected changes in revenue before approving new developments.
    - Goal ED 4, Policy 4.2: Support local retail by placing adequate residential density in close proximity to businesses.
    - Goal ED 4, Policy 4.3: Consider the economic impact of supply and demand in residential development.
    - Goal ED 4, Policy 4.8: Encourage the development of low-density, high-quality neighborhoods adjacent to existing cities.
  - **Goal T 1: Provide well-maintained transportation infrastructure including roads, paved pathways, and sidewalks.**
    - Goal T 1, Policy 1.3: New development will provide adequate transportation facilities to accommodate needed services.
    - Goal T 3, Policy 3.12: When key transportation routes and pathways cross into or link with routes in other political jurisdictions, a substantial “extra” effort shall be made to coordinate with the other jurisdictions in planning and maintaining the affected roadways and pathways so that residents do not suffer as a result of an uncoordinated failure to take timely action.
  - **Goal NROR 1: Conserve our public lands, trail systems, and natural resources (air, water, wildlife, fisheries, wetlands, dark skies, viewsheds, soundscape, soils, open space, native vegetation).**
  - **Goal NROR 4: Balance private property rights and protection of our natural resources.**

Goal NROR 4, Policy 4.1: Ensure that development regulations balance natural resources protection, viewshed protection, and growth, are clear and predictable, and preserve the economic value of the land.

- **Goal NROR 5: Recognize, respect, and/or mitigate natural hazards, including but not limited to flooding, earthquakes, landslides, radon, and fires.**

Goal NROR 5, Policy 5.2: Hazardous areas that present danger to life and property from flood, forest fire, steep slopes, erosion, unstable soil, subsidence or other hazards will be delineated, and development in such areas will be carefully controlled or prohibited by a rigorous building code and permitting process.

- **Goal NROR 8: Respect sensitive habitat and migration areas for wildlife.**

Goal NROR 8 Policy 8.1: Teton County recognizes that wildlife and wildlife habitats provide economic, recreational, and environmental benefits for the residents and visitors of Teton County. Land development decisions will strongly weigh the needs of wildlife to protect the inherent values that they provide.

Goal NROR 8 Policy 8.2: Work with landowners, the Idaho Department of Fish and Game, other state and federal agencies, non-governmental organizations, and other natural resources professionals to utilize wildlife habitat and species information and other tools (such as Western Governors Association Crucial Habitat Assessment Tool and the Wildlife Overlay Map), including new information as it becomes available, to make land use and site planning decisions.

Goal NROR 8 Policy 8.3: Minimize the cumulative impacts of development on wildlife and wildlife habitat.

Goal NROR 8 Policy 8.4: Protect and/or improve the diversity of native vegetation.

Goal NROR 8 Policy 8.6: A Wildlife Impact Mitigation Plan shall be developed for any development project which impacts an important habitat or which presents concerns of detrimental human-wildlife interaction. Requirements and performance standards for the mitigation plan shall be clearly established in the Zoning and/or Subdivision Ordinance and shall be the basis for approval of the plan.

- **Goal ARH 1: Preserve and enhance Teton Valley's small town feel, rural heritage, and distinctive identity.**

Goal ARH 1 Policy 1.3: Ensure that open spaces are managed responsibly.

Goal ARH 1 Policy 1.5: Support the preservation of open space, farmland, natural beauty, and critical environmental areas.

- **Goal ARH 5: Reduce infestation/introduction of invasive species.**

Goal ARH 5 Policy 5.6: Address the cause of invasive species infestations and work to reduce initial outbreaks especially on disturbed lands.

b. The application complies with all applicable County regulations. (amd. 11-14- 08)

- The planning staff believes this application complies with all applicable County regulations. Some regulations were addressed in the DRC meeting that need to be addressed, see KEY ISSUES above.
- The Natural Resource Analysis concluded that the proposed development was compliant with the WH Overlay in Title 9 of the Teton County Code.

- c. If the application is for a PUD, it complies with any regulations applicable to PUDs under Chapter 5 of Title 9, including without limitation regulations controlling the types and locations of open space to be included in the development and the required design and size of development clusters. If the application is for a Planned Community PUD, the application adequately mitigates any impacts identified in those additional studies required by Section 9-3-2(C). (amd. 11-14-08)
  - This does not apply to this application because it is not a PUD.
- d. The application includes trails and pathways as required by Section 9-4-2(B-4) to the maximum extent feasible. (amd. 11-14-08)
  - This does not apply to this application because it does not include trails or pathways.
- e. The application is consistent with the results of any Nutrient-Pathogen Study required for the property and includes any conditions or changes required to avoid any potential degradation of surface or groundwater identified in that study. (amd. 11-14-08)
  - This does not apply to this application because a Nutrient-Pathogen Study was not required.
- f. The application is consistent with the recommendations of any report on the adequacy of the proposed sewage system for the development and includes any recommended mitigation measures identified in that report. (amd. 11-14-08)
  - See comments from EIPHD above.
- g. The application is consistent with any Traffic Impact Study required for the property and will not result in a decrease in the level of service (for example, from level of service B to C) on any State Highway or a maintained county road and includes any mitigation measures recommended in the Traffic Impact Study.(amd. 11-14-08)
  - This does not apply to this application because a Traffic Impact Study was not required.
- h. If the application is for land that is not adjacent to a State Highway or a maintained county road, the applicant will bear the costs of constructing roads to connect the proposed development to at least one State Highway or a maintained county road, and adequate for anticipated traffic and will be constructed to County Road Standards. (amd. 11-14-08)
  - This does not apply to this application because it has an existing driveway connected to a maintained county road.
- i. If a Natural Resources Analysis is required, the proposed development will avoid all mapped Overlay Areas (except the AV Airport Vicinity Overlay Area), or will minimize any unavoidable impacts to the mapped Overlay Areas to the maximum extent feasible and mitigate any unavoidable impacts. In the case of land located in the WH Overlay Area, the duty to avoid or mitigate impacts on habitat areas shall only apply if the wildlife habitat assessment reveals evidence of an indicator species or the presence of indicator habitat, and shall only apply to portions of the parcel where the evidence or habitat is found. (amd. 11-14-08)
  - The property is entirely within the WH Overlay Area. The applicant is developing the property in a way so that there will be minor adverse, long-term impacts on mule deer and negligible adverse, long-term impacts on elk. A mitigation plan was developed in the Natural Resource Analysis to reduce impact.
  - The property is in a Bear Conflict Zone, so the subdivision must adhere to the Teton County Bear Conflict Prevention Standards (§4-7-3).
- j. The required Public Service/Fiscal Analysis shows that all public services provided to the proposed subdivision or PUD have adequate capacity to service it, or if they do not, the applicant has committed to mitigation or financing to ensure that those services and facilities will be provided within two (2) years after the first unit in the development is occupied and that any shortfall of tax revenues below the costs of providing the services or facilities will be covered without cost to the County. (amd. 11-14-08 )
  - The subdivision will utilize private wells and septic systems.

- Access will be provided by a public road: Victor Cemetery Rd. The applicant is to get approval from the City of Victor to use that access; a recommendation has been received – see Inter-agency and Departmental Review Comments above.
  - The subdivision is in close proximity to the City of Victor, reducing the distance needed to travel for emergency services.
  - Due to the proximity to the City of Victor and the fact it is only two lots, this should not place a financial burden on the county.
- k. The application is consistent with any capital improvements plan adopted by the County. (amd. 11-14-08)
- Due to the proximity to the City of Victor, this property will not place a large demand (or any demand) on Teton County for capital improvements.
- l. An adequate institutional structure has been created to ensure that long-term maintenance costs of roads, water, sewer, and drainage systems will be collected from within the development and used to maintain such items. If the chosen structure relies on payments of dues (for example, through a homeowners association) rather than taxes, the county shall be granted the institutional power to enforce payments of those dues in the event the organization fails to do so. (amd. 11-14-08)
- An institutional structure has not been created. Roads, water, sewer, and drainage systems on the property are all private.
- m. If land ownership boundaries or natural terrain features make it impossible for the application to meet all of the criteria outlined in Section 9-3-2(C- 3), the application shall meet as many of the criteria as possible. (amd. 11-14-08)
- The eastern portion of the property is very steep. The applicant is developing the property in a way, so that those slopes are avoided and preserved.
- n. In addition to the above, for a Planned Community PUD, the application is consistent with the recommendations of any report on the adequacy of the school system to accommodate school aged children anticipated by the development, and includes any recommended mitigation measures identified in that study. If the applicant is obligated to pay an impact fee for schools, then mitigation measures identified in the report will not be required. (amd. 11-14-08)
- This does not apply to this application because it is not a PUD.

#### **RECOMMENDED CONDITIONS OF APPROVAL**

- Compliance with all local, state, and federal regulations.
- Compliance with Teton County Driveway Standards.
- Compliance with Teton County Dark sky Ordinance
- Signs in compliance with Title 13 Section 7 of the Teton County Code.
- Compliance with Teton County Bear Conflict Prevention Standards.
- Address the U.S. Fish & Wildlife letter in Natural Resource Analysis.

#### **PLANNING & ZONING COMMISSION ACTION:**

A. Approve the Preliminary Plat, with the recommended conditions of approval listed in this staff report, having provided the reasons and justifications for the approval.

B. Approve the Preliminary Plat, with modifications to the application request, or adding conditions of approval, having provided the reasons and justifications for the approval and for any modifications or conditions.

C. Deny the Preliminary Plat application request and provide the reasons and justifications for the denial.



D. Continue to a future PZC Public Hearing with reasons given as to the continuation or need for additional information.

**PLANNING STAFF RECOMMENDATIONS:**

**The Planning Staff recommends ACTION A, APPROVE** the Preliminary Plat, with the recommended conditions of approval listed in this staff report, having provided the reasons and justifications for the approval.

Staff suggests the following motion could state a finding of fact and conclusion of law if a Commissioner wanted to approve the application:

*Having concluded that all the Criteria for Approval of a Preliminary Plat found in Title 9-3-2-B can be satisfied with the inclusion of the recommended conditions of approval, and having found that the considerations for granting the Preliminary Plat Approval to Mr. Daniel and David Bender can be justified and have been presented in the application materials, staff report, and presentations to the Planning & Zoning Commission,*

- *and having found that the proposal is generally consistent with the goals and policies of the 2012-2030 Teton County Comprehensive Plan,*
- *I RECOMMEND APPROVAL of the Preliminary Plat for Taylor Shadows subdivision as described in the application materials submitted May 28, 2014 and as supplemented with additional applicant information attached to this staff report.*

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Prepared by Kristin Rader

**Attachments:**

- Application
- Preliminary Plat
- Final Plat/Master Plan
- Development Agreement
- CC&R's
- Natural Resource Analysis
- Soil Resource Report
- Stormwater Management Report
- Road Construction Drawings
- Erosion Plan

Letters of Agency Review:

- U.S. Fish and Wildlife
- City of Victor Letter
- Eastern Idaho Public Health District
- Idaho Department of Fish and Game

End of Staff Report